MONTANA LEGISLATIVE HISTORY

Chapter 297 19 95

Bill H _____ S 78 Original bill & history ✓ C

H. Committee on Natural Res

Hearing Date(s) 3-3 ✓ C

3-6 ✓ C

_____ C

_____ C

Date Out _____ C

S. Committee on Natural Res.

Hearing Date(s) 1-16 ✓ C

1-27 ✓ C

_____ C

_____ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SB 78 INTRODUCED BY GROSFIELD, ET AL.

MODIFY CERTAIN REQUIREMENTS FOR WATER POLLUTION CONTROL ADVISORY COUNCIL

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

1/09	INTRODUCED		
1/09	FIRST READING		
1/09	REFERRED TO NATURAL RESOURCES		
1/10	FISCAL NOTE REQUESTED		
1/16	HEARING		
1/16	FISCAL NOTE RECEIVED		
1/16	FISCAL NOTE PRINTED		
2/02	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/03	2ND READING PASSED	48	1
2/04	3RD READING PASSED	43	2
	TRANSMITTED TO HOUSE		
2/06	FIRST READING		
2/06	REFERRED TO NATURAL RESOURCES		
3/03	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	95	2
3/14	3RD READING CONCURRED	96	3
	RETURNED TO SENATE WITH AMENDMENTS		
3/18	2ND READING AMENDMENTS CONCURRED	46	0
3/20	3RD READING AMENDMENTS CONCURRED	49	1
3/25	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 297		
	EFFECTIVE DATE: 07/01/95		

SB 79 INTRODUCED BY BROWN

REQUIRE ELECTORS OF EACH ELEMENTARY SCHOOL DISTRICT WITHIN BOUNDARIES OF A HIGH SCHOOL DISTRICT TO VOTE IN 1997 TRUSTEE ELECTIONS AND AT 7-YEAR INTERVALS THEREAFTER ON WHETHER TO ANNEX ELEMENTARY DISTRICT TO ELEMENTARY DISTRICT WHERE THE HIGH SCHOOL BUILDING IS LOCATED

1/09	INTRODUCED
1/09	FIRST READING
1/09	REFERRED TO EDUCATION & CULTURAL RESOURCES
1/13	HEARING
1/24	TABLED IN COMMITTEE
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY
	DIED IN COMMITTEE

SB 80 INTRODUCED BY KEATING, ET AL.

EXEMPT FROM OVERTIME REQUIREMENTS AN EMPLOYEE EMPLOYED AS A RADIO ANNOUNCER, NEWS EDITOR, OR CHIEF ENGINEER IN A SECOND- OR THIRD-CLASS CITY OR A TOWN

1/10	INTRODUCED
1/10	FIRST READING
1/10	REFERRED TO LABOR & EMPLOYMENT RELATIONS
1/11	FISCAL NOTE REQUESTED
1/16	FISCAL NOTE RECEIVED
1/17	FISCAL NOTE PRINTED
1/17	HEARING
1/20	COMMITTEE REPORT—BILL PASSED

SENATE BILL NO. 78

INTRODUCED BY Grosfield Knox Cocchiarella Dhaemy

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING CERTAIN REQUIREMENTS FOR THE WATER POLLUTION CONTROL ADVISORY COUNCIL; REMOVING THE VOLUNTARY PERFORMANCE BOND REQUIREMENTS UNDER THE WATER QUALITY LAWS AND AUTHORIZING THE DEPARTMENT TO REQUIRE PERFORMANCE BONDS FOR DISCHARGE PERMITS ISSUED TO APPLICANTS WHOSE ACTIVITIES WILL REQUIRE RECLAMATION OF DISTURBED LAND THAT MAY AFFECT WATER QUALITY; REVISING FEE REQUIREMENTS FOR HOLDERS OF A PERMIT OR AUTHORIZATION UNDER THE WATER QUALITY LAWS; REVISING THE ENFORCEMENT PROVISIONS OF THE WATER QUALITY LAWS TO CLARIFY EXISTING ENFORCEMENT AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-221, 75-5-401, 75-5-405, 75-5-516, 75-5-601, 75-5-616, 75-5-621, 75-5-631, 75-5-632, AND 75-5-636, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-5-103, MCA, is amended to read:

"**75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and

includes sewage systems and treatment works.

(7) "Disturbed land" means the area of land altered by activities associated with a permit issued pursuant to this chapter that may affect the quality of waters located at or near lands owned or under the control of the permittee.

~~(7)~~(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

~~(8)~~(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(9)~~(10) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

~~(10)~~(11) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(11)~~(12) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(12)~~(13) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(13)~~(14) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(14)~~(15) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(15)~~(16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters ~~which~~ that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration, or flow ~~which~~ that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters ~~where~~ when the waters are used up within the irrigation system and the waters are not returned to any other state waters.

~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance

procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 2. Section 75-5-221, MCA, is amended to read:

"**75-5-221. Water pollution control advisory council -- general.** (1) The council provided for in 2-15-2107 shall select a ~~chairman~~ presiding officer from among its members. The director of ~~health and environmental sciences~~ the department shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) ~~It shall hold at least two regular meetings each calendar year. Special meetings shall~~ Meetings must be held at the call of the ~~chairman~~ presiding officer or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform ~~his~~ the member's duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution.

(5) The director of the department may designate other persons to participate with council members in evaluating particular issues arising under this chapter that are brought before the council."

Section 3. Section 75-5-401, MCA, is amended to read:

"**75-5-401. Board rules for permits.** (1) The board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits.

(2) The rules ~~shall~~ must allow the issuance or continuance of a permit only if the department finds

that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ~~insures~~ ensures that ~~such~~ the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules ~~shall~~ must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of ~~disposal systems~~ permitted activities for which a bond is ~~voluntarily~~ filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety."

NEW SECTION. **Section 4. Performance bond -- statement of policy.** (1) The department may not require a bond under 75-5-405 unless it determines that the permitted activity disturbs land in a magnitude or manner that poses a significant threat to the quality of state waters. A bond required under 75-5-405 must be used, if needed, only to reclaim disturbed land that may impact water quality. A bond required under 75-5-405 may not be used to remediate damages to state waters.

(2) The department may not require a bond for a permitted activity if the permitholder or applicant has posted a bond for the permitted activity with another state agency to reclaim disturbed land that may impact water quality.

(3) The bond amount must be limited to the reasonable costs necessary to eliminate anticipated potential impacts to state waters. In determining the bond amount, the department shall consult with the permitholder or applicant and give consideration to alternative means of water quality protection offered by the permitholder or applicant.

Section 5. Section 75-5-405, MCA, is amended to read:

"75-5-405. ~~Voluntary filing of performance~~ Performance bond -- terms -- hearing. (1) A person who holds or has applied for a permit pursuant to 75-5-401 may ~~voluntarily~~ be required to file a performance bond or other surety with the department for an amount sufficient to enable the state to

reclaim the ~~land~~ disturbed lands resulting from activity authorized by the permit that may impact water quality ~~by the project or activity authorized by the permit in accordance with all permit requirements and as needed to prevent pollution of state waters~~.

(2) ~~If the~~ The department ~~determines that~~ shall determine the appropriate bonding level, ~~does not~~ which must represent the present cost of reclaiming the disturbed land according to the reclamation requirements specified in the permit and the present cost of preventing pollution of state waters~~, the department shall notify the permittee and the permittee may modify the amount of the bond to accurately reflect the present cost~~.

(3) The applicant shall file with the department a bond payable to the state of Montana with surety satisfaction to the department in an amount determined by the department to be reasonably necessary to protect the quality of state waters from impacts resulting from disturbed land associated with the permitted activity. The bond must be conditioned upon compliance with the provisions of this chapter, rules implementing this chapter, and the conditions or limitations of the discharge permit.

(4) The department shall review the amount of each bond at the time of the permit renewal and shall notify the permittee if the review indicates that the bond level should be adjusted. When determined by the department that the bonding level of a permit does not represent the present costs of compliance with this chapter or of the protection of state waters, the department may modify the bonding requirements of that permit.

~~(3)~~(5) The department may not release all or ~~any~~ a portion of a performance bond or other surety filed pursuant to this section until reclamation of the disturbed land has been completed to the satisfaction of the department and the department has determined that pollution of state waters has not occurred. The department may initiate bond forfeiture proceedings if the permittee fails to satisfactorily reclaim the disturbed land or prevent pollution of state waters.

~~(4)~~(6) The department may not release a bond or other surety filed pursuant to this section until the public has been provided an opportunity for a hearing."

Section 6. Section 75-5-516, MCA, is amended to read:

"75-5-516. Fees authorized for recovery -- process -- rulemaking. (1) The board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board's and department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) The rules promulgated by the board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be ~~less than $250 or~~ more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple ~~storm water~~ discharge points may be assessed a lower fee for those points according to board rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be ~~less than $250 and may not be~~ more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple ~~storm water~~ discharge points may be assessed a lower fee for those points according to board rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under ~~this limitation~~ subsection (2)(b), the annual fee must be sufficient

to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

~~(i)~~(a) the fees collected under subsection (2)(a);

~~(ii)~~(b) state general fund appropriations for functions administered under this chapter; and

~~(iii)~~(c) federal grants for functions administered under this chapter.

~~(3)~~(4) For purposes of subsection ~~(2)~~(3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

~~(4)~~(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3); or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection ~~(4)(a)~~(5)(a).

~~(5)~~(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

~~(6)~~(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

~~(7)~~(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection ~~(6)~~(7). The appeal to the board must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

~~(8)~~(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection ~~(7)~~(8), the undisputed portion of the fee must be paid to the department upon written request of the department.

~~(9)~~(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

~~(10)~~(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111."

Section 7. Section 75-5-601, MCA, is amended to read:

"**75-5-601. Cleanup orders.** (1) The department ~~shall~~ may issue ~~orders~~ an order to a person to clean up any material that ~~he~~ the person or ~~his~~ the person's employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may pollute ~~them~~ state waters.

(2) If a unit of state or local government, including but not limited to a local board of health, county commission, governing body of a municipality, or state agency, has granted a permit or license to a person to discharge waste or has otherwise authorized an activity that involves the placement of waste and the department has reason to believe that the waste is causing or is likely to cause pollution of state waters, the department may issue an order to the unit of state or local government to take measures to ensure that the wastes causing or likely to cause the pollution are cleaned up.

(3) The department may include in an order issued to a county commission pursuant to subsection (2) a request that the commission create a sewer district in the geographic area affected by the order for the purpose of establishing a public sewer system in accordance with the petition and election procedures provided by 7-13-2204 and 7-13-2208 through 7-13-2214."

NEW SECTION. **Section 8. Enforcement response.** (1) Whenever, on the basis of information available to the department, the department finds that a person is in violation of this chapter, a rule adopted under this chapter, or a condition or limitation in a permit, authorization, or order issued under this chapter, the department shall initiate an enforcement response, which may include any of the following actions:

(a) issuance of a letter notifying the person of the violation and requiring compliance;

(b) issuance of an order requiring the person to correct the violation pursuant to 75-5-601, 75-5-611, 75-5-613, and 75-5-621;

(c) bringing a judicial action as authorized by 75-5-614 and 75-5-622; or

(d) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and 75-5-631 through 75-5-633.

(2) The provisions of this chapter do not limit the authority of the department to bring a judicial

action, which may include the assessment of penalties, prior to initiating any administrative action authorized by this chapter.

Section 9. Section 75-5-616, MCA, is amended to read:

"**75-5-616. Enforcement of permits and chapter.** The department shall take ~~such~~ actions ~~as~~ that are authorized ~~or required~~ under ~~75-5-612 through 75-5-615~~ this part to ~~insure~~ ensure that the terms and conditions of issued permits are complied with and to ~~insure~~ ensure that violations of this chapter are appropriately prosecuted."

Section 10. Section 75-5-621, MCA, is amended to read:

"**75-5-621. Emergencies.** (1) Notwithstanding ~~any~~ other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under ~~it which~~ this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department ~~shall~~ may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order ~~shall be~~ is effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order ~~shall~~ must conform to the requirements of 75-5-611(1) so far as practicable. The notice ~~shall~~ must indicate that the order is an emergency order.

(3) Upon issuing ~~such~~ an order, the department shall fix a place and time for a hearing before the board, not later than 5 days ~~thereafter~~ after issuing the order unless the person to whom the order is directed ~~shall request~~ requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing ~~shall~~ must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board ~~shall~~ must be accompanied by the statement specified in 75-5-611(5). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. The initiation of ~~such~~ an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section."

Section 11. Section 75-5-631, MCA, is amended to read:

"**75-5-631. Civil penalties -- injunctions not barred.** (1) ~~A~~ In an action initiated by the department to collect civil penalties against a person who ~~violates~~ is found to have violated this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter, the person ~~shall be~~ is subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) When seeking penalties under this section, the department shall take into account the following factors in determining an appropriate settlement~~,~~ or judgment, as appropriate ~~if any, subsequent to the filing of a complaint~~:

(a) the nature, circumstances, extent, and gravity of the violation; and

(b) with respect to the violator, ~~his~~ the violator's ability to pay, ~~any~~ prior history of ~~such~~ violations, the economic benefit or savings, if any, to the violator resulting from the violator's action, and ~~any~~ other matters ~~as~~ that justice may require."

Section 12. Section 75-5-632, MCA, is amended to read:

"**75-5-632. Criminal penalties.** A person who willfully or negligently violates 75-5-605 or any pretreatment standard established pursuant to this chapter is guilty of an offense and, upon conviction, is subject to a fine not to exceed $25,000 per day of violation or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, subsequent convictions ~~shall~~ subject a person to a fine of not more than $50,000 per day of violation or imprisonment for not more than 2 years, or both."

Section 13. Section 75-5-636, MCA, is amended to read:

"**75-5-636. ~~Action~~ Investigation of complaints by other parties.** A person, association, corporation, or agency of the state or federal government may ~~apply to~~ notify the department ~~protesting a~~ of an alleged violation of this chapter. ~~The~~ Based upon information submitted by the person, association, corporation, or agency, the department shall ~~make~~ conduct an investigation ~~and make a written report to the person, association, corporation, or agency which made the protest~~ to determine the validity of the complaint. If

a violation is established by the department's investigation ~~of the department~~, the department shall initiate an appropriate enforcement ~~action shall be taken~~ response as described in [section 7]."

NEW SECTION. **Section 14. Codification instructions.** (1) [Section 4] is intended to be codified as an integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to [section 4].

(2) [Section 8] is intended to be codified as an integral part of Title 75, chapter 5, part 6, and the provisions of Title 75, chapter 5, part 6, apply to [section 8].

NEW SECTION. **Section 15. Effective date.** [This act] is effective July 1, 1995.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0078, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An Act modifying certain requirements for the Water Pollution Control Advisory Council; removing the voluntary performance bond requirements under the water quality laws and authorizing the department to require performance bonds for discharge permits issued to applicants, where the activities under the permit will require reclamation of disturbed land that may affect water quality; revising fee requirements for holders of a permit or authorization under the water quality laws; revising the enforcement of water quality laws to clarify existing enforcement authority.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point for determining any fiscal impact due to this bill.
2. Permitted facilities that are already required to post a reclamation bond with another state agency will not be required to obtain a bond under this bill.
3. During each year of the biennium, two to four facilities will be required to post performance bonds. This will cost the department approximately $2,000 to $4,000 in administrative costs to process these bonds. However, this is already reflected in the Executive Budget present law, so there is no additional impact.
4. Approximately 65% of the 700 permittees will qualify for an annual fee reduction. The overall fee reduction will be about 20%. This is also reflected in the Executive Budget present law, so there is no additional impact.
5. Fee rules enacted in compliance with the HB0388 (1993 Session) statement of intent mitigate a potential decrease in fee revenue due to this bill. There may be some minimal decrease, but the department is not able to determine the amount at this time.

FISCAL IMPACT:

Not able to determine at this time. (Please see assumption 5, above.)

Net Impact:

Not able to determine at this time. (Please see assumption 5, above.)

TECHNICAL NOTES:

The statement of intent of HB0388 (1993 Session) contained the provision for up to a 25% annual fee reduction based on compliance with permit limits. Revenue projections at that time assumed an overall reduction in fee revenue of about 20%, which was approximately $140,000. Fee rules were adopted containing the provision for up to a 25% reduction in fees, thus the actual revenue decrease if this bill passes will be minimal. At this time, fees appear to be sufficient to cover program costs.

Dave Lewis 1-16-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

1/16/95

LORENTS GROSFIELD, PRIMARY SPONSOR DATE

Fiscal Note for SB0078, as introduced

SB78

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ------- REREFERRED ---- DATE READ

HJ0025	QUILICI, JOE		SUPPORT TECHNOLOGY FOR MINE WASTE IN BUTTE			
	2/21	3/10		CONCUR	VOTE:	3/13
HJ0026	CURTISS, AUBYN		RESOLUTION OPPOSING CLOSURE OF MISSOULA REGIONAL FOREST SERVICE OFFICE			
	2/27	3/10		CONCUR	VOTE:	3/21
SB0046	SWYSGOOD, CHUCK		GROUND WATER ASSESSMENT AND MONITORING PROGRAM FUNDING			
	1/04	1/09		PASS AS AMENDED	VOTE:	1/17
SB0048	KEATING, TOM		AN ACT AMENDING CERTAIN PROVISIONS OF THE MONTANA CLEAN AIR ACT			
	1/03	1/09		PASS AS AMENDED	VOTE:	1/24
SB0071	STANG, BARRY		REVISING THE PETROLEUM TANK RELEASE CLEAN UP LAWS			
	1/09	1/13		DO PASS	VOTE:	1/17
SB0078	GROSFIELD, LORENTS		WATER QUALITY PERMIT ENFORCEMENT, FEE, AND BONDING REVISIONS			
	1/09	1/16		PASS AS AMENDED	VOTE:	2/02
SB0128	JERGESON, GREG		SURCHARGE ON CERTAIN RESIDENTIAL IMPROVED LAND TO DEFRAY FIRE SUPPRESSION $$			
	1/13	1/18		PASS AS AMENDED	VOTE:	2/02
SB0137	BROOKE, VIVIAN		REVISING THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBLITY ACT			
	1/14	2/10		TABLED ON 02/10	VOTE:	
SB0145	KEATING, TOM		RETURN PUBLIC DOMAIN TO STATE -- MT LAND REFORMATION ACT			
	1/16	2/06		DO PASS	VOTE:	2/11
SB0147	HERTEL, JOHN		STATE WATER PROJECT LAW REVISIONS			
	1/16	1/25		PASS AS AMENDED	VOTE:	2/10
SB0153	BROOKE, VIVIAN		CONFORM TO SAFE DRINKING WATER ACT; CREATE WELLHEAD PROTECTION PROGRAM			
	1/16	1/23		PASS AS AMENDED	VOTE:	2/02
SB0186	BECK, TOM		DSL ABANDONED MINE RECLAMATION AUTHORITY			
	1/18	1/25		DO PASS	VOTE:	2/02

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN LARRY TVEIT** on January 16, 1995, at 1:00 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 78
Executive Action: None

{Tape: 1; Side: B; Comments: Chairman Grosfield relinquished the chair to Vice-Chairman Larry Tveit in order to present SB 78.}

HEARING ON SB 78

Opening Statement by Sponsor: **SEN. GROSFIELD** said SB 78 is response to an audit of the Water Quality Bureau by the Legislative Auditor. Recommendations from the audit for the Water Quality Bureau should be available from the Legislative Auditor's office. Of the ten recommendations, the first six were questions of management, enforcement policy, etc. The **Department of Health and Environmental Sciences** are putting together a management and enforcement policy, and are in the process of

restructuring the enforcement compliance strategy. The tenth recommendation in the audit will be in another bill within a few days. SB 78 addresses audit recommendations 7-9. Recommendation 7 has to do with clarification of some exclusions in some rules adopted under the Water Quality Act. Recommendation 8 addresses civil penalties and cleanup orders for violations. The audit recommended that the agency change from "shall issue an order..." to "may issue an order..." , because "shall issue an order" could be applied to situations such as an applicant filing a late report, where a cleanup order would not be appropriate.

SEN. GROSFIELD said Sections 1,3,5 of SB 78 addresses performance bonds. There was a performance bond provision in the Water Quality Act, but the audit revealed that bonding authority didn't accomplish anything and could be eliminated. The circumstances for which a bond can be acquired are not expanded from the old law. He said there are some things in SB 78 that are not in response to that particular audit, but in response to other audits done in the department. Section 2 is one of those with a minor change that says, "Water pollution control advisory council shall hold at least two meetings each calendar year if necessary." On Page 7, Line 14, the words "less than $250" are struck. A $250 fee for a very small project would be in excess. Striking that would give the department the discretion of setting a lower fee. The new language on the bottom of Page 7 is kind of a good actor incentive. If the permittee is doing better than required by the permit, he would be entitled to a 25% reduction of his permit fee.

<u>Proponents' Testimony</u>:

Glenn Marx, Policy Director, Governor Mark Racicot, said the administration supports SB 78 and the recommendations produced by the performance audit. **EXHIBIT 1.**

Steve Pilcher, Administrator, Water Quality Division, said the division was in support of SB 78. He stated during the past year the department has been the subject of both a Financial Compliance Audit and a Performance Audit for enforcement of the Water Quality and Public Water Supply Acts. He said SB 78 implements several of the department's responses to the recommendations contained in those reports. **EXHIBIT 2.**

Florence Orr, representing the Northern Plains Resource Council, and the Concerned Citizens of Pony, said because of the Water Quality Division's failure to enforce the Water Quality Act, the NPRC called for a legislative audit in the 1993 legislature. She stated that a mill near Pony that has only operated for a year and a half has contaminated the ground water for the last five years with cyanide. The Department of State Lands said the mill is considered grandfathered and the rules of bonding don't apply. **EXHIBIT 3.**

Richard Parks, owner and operator of a sporting goods store and fly fishing outfitting business in Gardner, Montana and a member of the Northern Plains Resource Council, stated he supported SB 78, but recommended several amendments as contained in **EXHIBIT 4.**

Julia Page, Chairman of the Northern Plans Resource Council's Legislative Task Force, said she supported SB 78 with some reservations, **EXHIBIT 5. Ms. Page** requested an amendment to SB 78 as contained in **EXHIBIT 5a.**

{Tape: 1; Side: B;}

Jerry Iverson, Chairman of the Cottonwood Resource Council, an affiliate of the Northern Plains Resource Council, said he supports passage of SB 78, **EXHIBIT 6. Mr. Iverson** requested an amendment as contained in **EXHIBIT 6a.**

David Zimmerman, Chairman of the Concerned Citizens of Pony, said he would like to encourage the support of SB 78. He said the ground pollution in Pony clearly needs bonding authority by the DHES, **EXHIBIT 7.**

Jim Jenson, Executive Director of the Montana Environmental Information Center, said there have been some legitimate concerns raised on the potential effect on small miners. He said the State Lands bond requirements for small miners are working well and would not want SB 78 to override that legislation. However, the bonding authority by DHES is important to the citizens to prevent ground water contamination such as has happened at Pony.

Opponents' Testimony:

John Fitzpatrick, Director of Community Affairs for Pegasus Gold, Corp., said he was opposed to SB 78. He said water bonding is not a new concept to the legislature. It has been a key part of the Northern Plains Resource Council's legislative agenda for many years. There were two bills before the session in 1991 and 1993 dealing with the hard rock and coal industries that were defeated. He said that SB 78 goes beyond the mining industry. The legislative audit identified a number of problems with DHES's water quality division. The Montana Water Quality Act has a very broad grant of authority that is expressed in the administrative rules. **Mr. Fitzpatrick** said the DHES has crafted the most comprehensive water quality management program in the United States. SB 78 is just another way in which DHES expands their authority. When administrative rules are drafted they often go beyond the statutes.

Mr. Fitzpatrick said Page 2, Line 2 describes the definition of disturbed land. He said the only place that is considered disturbed land is in the hard rock statutes, and that went beyond the hard rock definition. It means the area of land altered by activities associated with the permit issued pursuant to the

bill. The DHES issues all kinds of permits such as the discharge permit of which there are over three hundred in Montana. **Mr. Fitzpatrick** said if SB 78 passes there will be more rule making from the DHES than can be imagined. On Page 6, the bill refers to posting of bonds, and for a large company, surety bonds are usually not a big problem. However, for small companies, they will have difficulty trying to procure a surety bond, and will have to put up a cash bond or make some other arrangements. SB 78 could be an invitation to change the bond amounts that could have a significant effect on small businesses. He stated that on the bottom of Page 7 of the bill, it refers to effluent credits, but doubted that any of the facilities would ever receive a credit because there is very little flexibility to reduce the amounts.

Gary Langley, Executive Director, Montana Mining Association, presented a report to the committee members entitled "Mining And The Environment - A Balanced Relationship." **EXHIBIT 8.**

He said a number of years ago the Montana Mining Association took the lead in introducing legislation that required placer miners to be bonded up to $5,000 per operation for not more than 5 acres. Legislation was also passed requiring an operator using cyanide to obtain a full operating permit. He said he sympathized with people in Pony, but that mill was in operation before the rules took effect. He said he understood there were plans in progress to correct the problems, and if that isn't done, they will never be able to acquire another operating permit again. There are funds available that have been paid for by mining companies to take care of those kind of problems. **Mr. Langley** stated that the mines in operation today are posting millions of dollars in bonds to ensure there is no permanent damage to the land or the water. Under legislation, the department had an option of either dropping the voluntary bond or requesting a mandatory bond. Naturally, when there was a choice, they opted for the mandatory bond. Because of legislation, a bond can be required from a mining company whenever the department wishes. He said SB 78 was an over-reaction of the legislative audit. The Department of State lands already requires bonding provisions. and SB 78 is adding another requirement, expense, and uncertainty to the mining process, and giving more discretion to bureaucratic agencies. It is a time when the mining industry is trying to seek stability in the laws of government.

Carl Schweitzer representing the Montana Contractors Association, said the association opposed SB 78 because of the definition of disturbed lands. The contractors are inundated by regulations and rules that the DHES is applying to them. The contractors have a concern about the environment and our waters, but the DHES goes to extremes and the cost and expense is overwhelming. SB 78 seems to include everything concerning disturbed lands.

Don Allen representing the Montana Wood Products Association, said they were in opposition to SB 78. When the meeting was held in the EQC regarding the proposed legislation, several questions were asked concerning the bill. He stated some definitions need to be clarified, because there are inconsistencies in the bill. For example, Page 2, Line 2, the bill refers to "disturbed land" and in another section it refers to "state waters," which do not have the same meaning.

{Tape: 2; Side: A}

Frank Crowley, representing Butte Mining, Rose Bud Energy, etc., said he attended several meetings on water quality enforcement, and realized that **SEN GROSFIELD** and staff reviewed the problem very carefully. He said the department has had very little time to react to the legislative audit and the EQC findings. He said the department issues hundreds of different kinds of bonding permits every year. There are storm water permits and general permits issued by rule. A general permit could require a creek operation or a sluice operation to post a bond. That was not the intention of the general permit requirement, and should be clarified by the DHES before action is taken on SB 78. He said all kinds of projects are proposed to the agency and a general definition for disturbed lands will be a big issue for the agency. The agency has not had time to respond to the audit or to EQC. He stated that requiring a permittee to respond to bond for everything, is imposing an unnecessary administrative burden on the agency.

Mr. Crowley said the new enforcement policy should be given time to work, before adding more requirements. The agency is prepared to enforce the water quality statutes and requirements of the state in an efficient and dependable manner.

John Blomquist, representing the Montana Stockgrowers, said the definition of "disturbed land" could mean a variety of activities that water quality permits are associated with. Some of the concerns of SB 78, are the effect on animal feeding operations, feed yards, etc. The **Dairymens Association** expressed their concern as well. There are concerns with the bonding requirements, because they are not defined in SB 78. He said some informational requirements should be established before an investigation. For example, in southwest Montana, there are a lot of grazing controversies, because of concerned citizens and federal employees making water quality allegations, and not supporting them. In following up on those allegations, no violations to substantiate those allegations were found.

Mike Murphy, Executive Director, Montana Water Resources Association, said the association opposes SB 78, primarily of the definition of "disturbed land." Also the bonding is very expensive and cannot be met by the smaller operators.

Ben Havdahl, representing the Montana Motor Carriers Association, said that the association was opposed to SB 78 for all of the reasons the other opponents stated. The MMCA represents a number of small businesses in the state and there is confusion with cost and compliance of water quality requirements. If compliance costs are added to the high cost of permit fees, small businesses will not be able to afford those increases.

Mr. Havdahl conducted a number of environmental workshops for the members to counsel them on compliance of water quality and permit requirements for water discharge and storm water runoff. There was a lot of misinformation discovered at those meetings such as, some members were confused as to whether or not a permit was needed. Those that tried to comply, were told by telephone to describe their operation, and based on the telephone conversation, it was decided whether or not a permit was needed. He stated it's not a question of wanting to comply, but of understanding the compliance.

Larry Brown, representing the Agricultural Preservation Association, said for a number of reasons already discussed, the association opposes SB 78. There are concerns with the description of "disturbed lands," and the bonding authority in the bill. He said there is federal legislation in the United States Congress, considering reauthorization of the storm water program. They are requesting $100 million to be distributed to the states, of which, Montana would be eligible for a portion of that. In most cases SB 78 is a duplication that is already on the books in State Lands and other agencies, and the association doesn't support another bill of the same content.

Holly Franz, representing the Montana Power Company, said the company was concerned with the ambiguity of the bonding provisions, those provisions do not belong with water quality.

Peggy Trenk, representing the Western Environmental Trade Association, said they were in opposition to SB 78 because of the reasons already stated by previous opponents. During the EQC meetings, which were excellent, opinions were expressed as to whom the bill may or may not apply to; ranging from mining companies to septic tank installations. She stated there must be one version so everyone knows the intent of the bill, before the association can support that legislation.

Patrick Montalban, representing Montana State Resources from Cut Bank, and the Northern Montana Oil and Gas Association, said they were in opposition to SB 78 because of the description of "disturbed lands" and the concern for the small independent operators in northern Montana. Whenever a drill site is constructed it would fall under the description of "disturbed lands," and that is not acceptable. The bonding requirement is another issue, because taxes were not supposed to be increased. The House has already increased the costs of drilling permits and a change of bond requirements from one operator to another. He

said most of the small independent businesses have to put up cash bonds. There is a $250 bonding requirement on small pits, of which there are thousands in northern Montana that have been there for over forty or fifty years. Under the Board of Oil & Gas, there is a .002% license and privilege tax, and a bill will be introduced later in the session to increase that tax. Because of the decline of oil, the department needs more funds to operate, and permit fees are not included in the budget. The concern is, that the fees will go into administrative costs instead of regulations of water quality.

Questions From Committee Members and Responses:

SEN. MIKE FOSTER asked **Mr. Pilcher** if he would give an example of how a designated person would participate under the Water pollution Control Advisory Council, and if that person would have the right to vote.

Mr. Pilcher stated an example of the intended use of the advisory council, would be in the development of rule-making. The Water Quality Act gives considerable rule-making authority which deals with a variety of issues. For example, they were contemplating some rules dealing with oil and gas. The current membership of the Water Pollution Advisory Council is set by statute. One member on the council is appointed by statute that represents the inorganic waste disposal industry, and other members represent a variety of different activities in the state, but not oil and gas If rule-making pertained specifically to oil and gas, it would make sense to have a representative of that industry or someone with specific knowledge in that area. The voting arrangement had not been discussed, but he would assume it would be at the discretion of the Advisory Council.

SEN. KEN MILLER asked **Mr. Langley** if the mining industry was contributing funds to help resolve the Pony situation. **Mr. Langley** said that a letter from the mining company indicated they were going to do some reclamation, but there was no mention of funds. Previous operators had promises of some funds, but they were never received.

SEN. BROOKE asked **Michael Kakuk, Environmental Quality Council,** if he was instrumental in drafting that legislation. **Mr. Kakuk** replied it came through his computer, but that was all. **SEN. BROOKE** asked **Mr. Kakuk** if on Page 6, Line 11 that states, "protect the quality of state waters from impacts resulting from disturbed land associated with the permitted activity," was inconsistent. **Mr. Kakuk** replied he did not see any inconsistency.

SEN. BROOKE asked **Mr. Kakuk** if he thought the definition was too broad. He replied that was up to the committee members to decide.

SEN. BROOKE asked **Mr. Pilcher** if "disturbed land" was a good definition in SB 78.

{Tape: 2; Side: B}

Mr. Pilcher replied as an example, the Pony situation is considered "disturbed land" and the tailings impoundment poses a threat to water quality. He said any ground disturbance that would cause a potential contamination to state waters would be considered "disturbed land."

SEN. TOM KEATING asked **Mr. Pilcher** if the Pony situation could have been handled by the Department of State Lands. **Mr. Pilcher** replied that the Pony mill was an exception, as it was constructed at a time when the Department of State Lands did not have rules to regulate that type of an activity. At the time the mill was constructed, the only requirement was for the mill to acquire a waste discharge permit from DHES. Had that facility been permitted by the Department of State Lands, it would have been required to post a reclamation bond. Page 5, Section 4, Paragraph (2) of SB 78 states, "The department may not require a bond for a permitted activity if the permit holder or applicant has posted a bond for the permitted activity with another state agency to reclaim disturbed land that may impact water quality." That section was included so there would not be a duplication of bond requirements. If the bond was issued by the Department of State Lands, DHES would not have the authority to duplicate that bond.

SEN. KEATING asked **Mr. Pilcher** if there were other suggestions in the audit that the department is required to address statutorily. **Mr. Pilcher** answered that as the sponsor pointed out, the audit did include other recommendations that required a legislative response.

SEN. KEATING said the description of "disturbed land" is exceedingly broad and has scared the daylights out of every industry in the state. The audit recommended that either the rules were enforced or the statute changed, and the department chose to enforce rules.

Mr. Pilcher said he didn't believe they had attempted to make a tie between those two. The current Montana Water Quality Act, says, "that if the department determines that the bonding level does not represent the present cost of reclaiming the disturbed land according to reclamation requirements...", but the department attorneys advised that there was not a definition of "disturbed land," and that was going to be an issue if someone requested a voluntary proposal. Obviously from the comments that have been heard, that problem has not been completely addressed.

Mr. Pilcher stated the current rules recognize that certain activities are currently regulated by other agencies. When the

ground water pollution control program was developed in 1982 it made sense at that time to recognize that review and avoid a duplication of effort. However, it did not relieve them of complying with water quality laws, it only says that one permit is all that is required. The term "disturbed lands" has been challenged by numerous environmental groups. The department considered modifying the rules administratively, and to require facilities that were previously excluded, to retain a permit.

SEN. KEATING said Page 5 of SB 78 states " the department may not require a bond...", that seems very subjective. It further states, "a bond required under 75-5-405 must be used, if needed, only to reclaim disturbed land that may impact water quality." That is also vague. There are a lot of clauses in the bill that seem to be very subjective, because the language is not sufficiently specific in water quality permitting laws, and that is the reason for constant public hearings, court costs, etc. **Mr. Pilcher** stated that the implementation of the water pollution program is not as simple as it used to be. The department is trying to recognize requirements that are currently imposed on the regulated community. He said if the Department of State Lands requires a bond to deal with reclamation, that should also provide protection to state waters. The department is trying to avoid a duplication of bonding.

SEN. KEATING said he didn't find fault with the water quality bureau, but the department cannot administer water quality efficiently to please everyone.

SEN. MACK COLE asked **Mr. Langley** if the mining industry would be assisting the Pony situation. **Mr. Langley** responded that there were three things that could happen: 1. the DHES and the mining company may get together and come up with a plan to clean up the area, 2. in case the company walks away, there are resources from trust money for clean up, and 3. the mining industry had preliminary discussions with DHES and the Governor's office investigating whether or not the Water Quality Division could assist with the water cleanup.

SEN. B. F. "CHRIS" CHRISTIAENS asked **Mr. Pilcher** if it was necessary for new language because the good actor incentives would not be used. **Mr. Pilcher** responded it was necessary to keep the language, because facilities could realize a 25% reduction in permitting fees if the quality of their effluent was improved. He said it's a possibility that industries can discharge at rates less than required in their permit and take advantage of the savings.

<u>Closing by Sponsor</u>: **SEN. GROSFIELD** said he wanted to address the legislative audit. He said the purpose of a legislative audit is to make sure the agency is doing a good job in complying with the law. The first page of the audit says. "the purpose of the audit is to assess the operations of state government." One of the

recommendations of that audit was, that the hard rock mining bureau and the water quality bureau don't coordinate very well, and suggested both agencies remedy that situation. **SEN. GROSFIELD** said the EQC and the legislative audit committee held a joint meeting and SB 78 was recommended. The EQC did not recommend expanded bonding beyond the recommendation in the bill, because expanded bonding failed in the two previous legislative sessions. He said Page 5, Lines 19-21 states, "The department may not require a bond for a permitted activity if the permitholder or applicant has posted a bond for the permitted activity with another agency to reclaim disturbed land that may impact water quality." The situation in Pony is an exception because at the time Pony was started, bonding was not required. Under SB 78 bonding would be required, and without the bill, would not be required.

{Tape: 3,; Side: B}

SEN. GROSFIELD said the concept of SB 78 is, that it requires the department to respond to every case. The bill increases the department's flexibility. On page 49 of the audit, the recommendation was to seek legislation granting the department a wider range of disciplinary action. The reason is, that current law says that any violation of the statute requires a civil penalty and a cleanup order. The auditor inquired if the legislature intended that every single violation be corrected through a cleanup order and a civil penalty. For example, if a municipality did not send in their monthly monitoring data should a civil penalty be enforced. That particular provision of SB 78 actually gives the department more flexibility.

SEN. GROSFIELD said questions were asked if disturbed lands means feed lots, etc. Perhaps the committee needs to take another look at that issue. SB 78 lowers the minimum permit fee by striking the $250 minimum permit fee.

SEN. GROSFIELD noted that **SEN. KEATING** mentioned the Water Quality Act was not specific enough, and that puts the agency in a tough spot from time to time. He suggested that the committee members review whether or not those bonding requirements should apply to some of the general discharge permit holders. He said another bill that will be heard by the committee members, is an enforcement study by EQC, that may address the lack of specifics in SB 78.

SEN. GROSFIELD said in summary, most of the concerns expressed about the bill by both proponents and opponents had to do with bonding. He reminded the committee members that the Pony situation had not been remedied, and asked the committee members to consider passage of SB 78, because the bill addresses other important issues as well as the bonding provisions.

VICE CHAIRMAN TVEIT said executive action would not be taken because several areas of SB 78 needed to be addressed.

ADJOURNMENT

Adjournment: 2:30 PM

LARRY TVEIT, Vice Chairman

THEDA ROSSBERG, Secretary

LG/tr

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 1-16-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

SEN:1995
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SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 1-16-95
BILL NO. SB 78

TESTIMONY OF GLENN MARX
POLICY DIRECTOR
GOVERNOR MARC RACICOT

January 16, 1995
Senate Natural Resources Committee
SB 78

Mr. Chairman, my name is Glenn Marx, and serve on the personal staff of Governor Marc Racicot as policy director.

The administration supports SB 78 for two main reasons.

First, the bill is a result of one of the recommendations produced by the performance audit conducted during the 93-94 interim by the Legislative Auditor. The department welcomed that audit, and the recommendations contained in that audit are taken seriously. As a result, legislation designed to implement these agreed-to recommendations are also taken seriously.

Second, while the bonding provision of this bill will probably generate the most interest, we believe additional new language contained in the bill is important as well. This language is important because it will assist the Water Quality Division to implement improvements in water quality management and enforcement.

The reduction in fees, as outlined in Section 6 of the bill, offers clear incentives for permit compliance and improved water quality. Also, the enforcement response language in Sections 8 and 13 offer statutory common-sense guidance and procedures for enforcement actions.

This bill has been discussed at length by the department and the EQC, and has undergone a thorough public review.

Governor Racicot has it made it clear he wants to assist the department improve water quality management and enforcement. This bill is plays an important role in those goals.

Thank you.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 1-16-95
BILL NO. SB 78

SENATE BILL 78

TESTIMONY
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Steven L. Pilcher, Administrator
Water Quality Division

The Department of Health and Environmental Sciences(DHES) has requested your consideration of Senate Bill 78. During the past year, the department has been the subject of both a Financial-Compliance Audit and a Performance Audit for Enforcement of the Water Quality and Public Water Supply Acts. This bill implements several of the Department's responses to the recommendations contained in those reports. This bill has been discussed at length the Environemtnal Quality Council and has received their support.

The bill addresses a number of identified deficiencies including the following:

The Water Pollution Control Advisory has not met on the schedule specified in the current law. Public and regulated community participation in our water quality program is important. This bill would allow meetings to be held as necessary and allow the director to add members to assist in addressing particular issues.

The current law allows the department to hold a performance bond only when a permittee volunteers to provide the same. This bill would allow the department to require a performance bond in those cases when reclamation of a facility is necessary to protect the quality of state waters. The bill does not extend the area covered by the bond beyond that currently allowed under the voluntary provision.

House Bill 388 of the 1993 session contained conflicting direction relative to the minimum fee charged to permittees. The statement of intent established a minimum fee of $200 while the bill itself established a minimum fee of $250. Administrative rules adopted by the department chose the lower amount included in the statement of intent. This bill would eliminate the minimum fee amount and allow the department to set a minimum fee commensurate with the cost of issuing the permit.

Another conflict exists relative to a provision that provides an incentive, through an annual fee reduction, for facilities to improve the quality of their effluent. Facilities that produce an effluent at levels between 50% and 100% of their effluent limitations would qualify for a reduction in their annual permit fee of up to 25%. This is intended to provide permit holders with the incentive not to utilize all of the pollution capability of their permit.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 1-16-95
BILL NO. SB-78

The audit points out that under current law, the department must issue orders for any situation that may pollute state waters. The audit report suggested clarification in this area. This bill would provide the department discretion in use of orders and allow cleanup to be accomplished by other means. The bill identifies a variety of enforcement responses that the department may use in carrying out the provisions of the act.

We would be happy to answer any questions that the committee might have regarding this proposed legislation.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 1-16-95
BILL NO. SB-78

TESTIMONY OF FLORENCE ORE ON BEHALF OF THE NORTHERN PLAINS RESOURCE COUNCIL ON SB78 BEFORE THE NATURAL RESOURCES COMMITTEE

HEARING, January 16, 1995

Mr. Chairman, members of the committee, my name is Florence Ore, and I reside in Pony, Montana. I'm a member of the Concerned Citizens of Pony and the Northern Plains Resource Council where I chair their Hard Rock Task Force. I'm here today to testify on behalf of Northern Plains, a grassroots citizens' organization of over 2,000 farmers, ranchers, businessmen and other conservationists from across Montana. We work together to promote sustainable economic development and to see that our natural resources are maintained and improved for present and future generations as our Constitution demands.

In the 1993 legislature, NPRC supported the resolution calling for a legislative audit of the Water Quality Division of the Department of Health and Environmental Sciences because our members have had to live with the consequences of the Divisions's continual failure to enforce the Water Quality Act. The Legislative Audit Committee report agreed with us and made recommendations for strengthening the administrative oversight, record keeping, monitoring and enforcement actions of the Division.

While monitoring this audit our members have testified before the Audit Committee and the Environmental Quality Council. We've commented on drafts of SB78 to the agency and the EQC, and appear today in support of it because it represents a sincere effort by the

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 1-16-95
BILL NO. SB-78

However, as we have previously pointed out to the Environmental Quality Council, the Division and to Senator Grosfield we feel SB.78 is too weak and fails to follow the recommendation of the Legislative Audit Committee which stated in recommendation #9 that the division should seek statutory authority to "require a performance bond, if necessary, "to ensure compliance with the Water Quality Act." This Act's purpose is to "Conserve water by protecting, maintaining and improving the quality and potability of water,...," not reclaiming land. This is the primary mission of the agency and it's their staff that has this expertise. Other agencies are in the business of reclaiming land. Northern Plains believes the discretion to require a bond should be broadened in three ways:

A) to allow the agency to require supplemental bonds "to ensure compliance with the Water Quality Act", and not limit the agency's discretion to bond "only to reclaim disturbed land" as is the case in SB78;

B) to allow the agency to require supplemental bonds if it doesn't believe that a bond required by another agency will be adequate to ensure compliance with the Water Quality Act; and

C) to allow the agency to require bonds to be used to remediate, i.e., clean-up, damages to state waters.

Thank you for hearing these comments and I ask you to seriously consider these strengthening changes which will help ensure the quality of our state waters will be maintained and improved.

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 1-16-95
BILL NO. SB 78

STATEMENT OF RICHARD PARKS IN SUPPORT OF SB 78
JANUARY 16, 1995

Mr. Chairman, members of the committee, for the record my name is Richard Parks. I own and operate a sporting goods store and fly fishing outfitting business in Gardiner, MT. Obviously maintaining Montana's high quality waters is critically important to my business. I appear today on my own behalf and as a member of the Northern Plains Resource Council.

I support SB-78 but I believe it can and should be stronger. First, some context - the Water Quality Division is charged with maintaining our water quality - not any unit of the Department of State Lands, nor any other unit of the Department of Health and Environmental Sciences. The purpose of permits issued by or concurred in by this division is to protect water quality, not license pollution. As far as I can tell the bonding provision as drafted only applies to 3 sorts of activity, custom cyanide mills predating June 1990, otherwise exempt small miners that require a discharge permit and private landfill or hazardous waste disposal sites. The state requires me to carry liability insurance as a condition of being licensed to drive on the public roads. The purpose of this insurance is to protect innocent members of the public from my mistakes. In like manner the bonding provisions of this bill should be intended to protect the public from the mistakes, incompetence or bad luck of those seeking permits to discharge to state waters.

Viewed in that context SB-78 should be strengthened by amending line 9 of the title, striking "issued to applicants whose activities will require reclamation of disturbed lands that may affect water quality;" and replacing that clause with, "to ensure compliance with the Water Quality Act." By analogy you can compare the effect of the bill as drafted with a provision in state law limiting my requirement to purchase liability insurance to coverage only when driving a perfectly operating vehicle, stone cold sober and within the speed limit.

This amendment requires sequential amendments to bring the body of the bill in conformity with its title as follows:

1. On page 5, line 15: strike "disturbs land in a magnitude or manner that"

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 1-16-95
BILL NO. SB-78

the little old lady, and you, and me and every other citizen and taxpayer who is going to be stuck with the bill, whether we had anything to do with the creation of the problem or not.

Please strengthen SB-78 and give it a "do pass" recommendation. Thank you for the opportunity to appear today. I stand ready to answer any questions you may have.

Northern Plains Resource Council

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 1-16-95
BILL NO. SB 78

Testimony of Julia Page on SB 78 before the Senate Natural Resources Committee

Monday, January 16, 1995

Mr. Chairman, members of the committee, my name is Julia Page. I am chairman of the Northern Plains Resource Council's Legislative Task Force. I am speaking today on behalf of NPRC.

I am also speaking in favor of SB 78. I do have some reservations with this bill, however. Particularly, I would like to address Section 13 of SB 78 titled "Investigation of complaints by other parties." This section, in detailing how the Water Quality Division responds to alleged violations of the Water Quality Act, does not provide a mechanism by which the Division informs the party alleging a violation of the results of the complaint.

The Legislative Auditors review of the Water Quality Division identified the failure of the Division to follow through with alleged violations as a problem that needed to be corrected.

To solve this problem, I would submit the attached amendments to SB 78. These amendments detail a method by which the Division is required to respond when people allege violations of the Water Quality Act. The amendment leaves intact the language of SB 78 that requires the Division to investigate all complaints. However, it also allows people to file complaints with the Division by signed affidavit and if they do so, requires the Division to respond to that individual, in writing, within 30 days.

In light of the adverse publicity the Water Quality Division received during the past year and in consideration of the recommendations of the Legislative Auditor's review of the Water Quality Division, I ask you to consider these amendments and urge you to give SB 78 a "do pass" recommendation.

(406) 248-1154

Northern Plains Resource Council

SENATE NATURAL RESOURCES
EXHIBIT NO. 5a
DATE 1-26-95
BILL NO. SB 78

5a

NPRC Amendment to SB 78

Section 13.
Investigation of complaints by other parties

Page 11, Section 13. Investigation of complaints by other parties.

1. Line 26
Following: "parties"
Insert: "(1)"

2. Line 30
Following: "complaint"
Insert: "(2) If the department is notified by a person, association, coporation, or agency of the federal government of an alleged violation by method of a signed affidavit, the department must within 30 days of receipt of the affidavit submit a written report to the party alleging the violation informing them whether:

(a) the department agrees a violation has occurred; or

(b) the department does not agree that a violation has occurred; or

(c) the department has not gathered enough information to make a determination that a violation has occurred, and is conducting further investigation.

(3) If the department determines further investigation is warranted, the department shall inform the party alleging the violation of the results of the further investigation within 60 days of the department's initial response to the affidavit.

(4)

2401 Montana Avenue #200 Billings, MT 59101-2336 (406) 248-1154

Northern Plains Resource Council

SENATE NATURAL RESOURCE
EXHIBIT NO. 6
DATE 1-16-95
BILL NO. SB 78

Testimony of Jerry Iverson on SB 78 before the Senate Natural Resources Committee

Monday, January 16, 1995

Mr. Chairman, members of the committee, my name is Jerry Iverson. I am chairman of the Cottonwood Resource Council, an affiliate of the Northern Plains Resource Council, based in Big Timber. I am speaking today on behalf of the Cottonwood Resource Council. I echo the comments made by Florence Ore, and I too support passage of SB 78.

However, I would call your attention to Section 10 on page 10, which deals with how the Water Quality Division responds in the case of emergencies. To quote from the bill starting at the end of line 11, "if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur."

It is the "may" in line 15 that concerns me. In my opinion, when harmful pollution is occurring or about to occur, the Water Quality Division should not be given latitude on whether it will act to stop the violation.

In our conversations with the Water Quality Division, they have indicated that the inclusion of "may" on line 15 will give them the latitude to pursue other actions beyond a cessation or cleanup order. Specifically, the Division has indicated that with this language, they would be able to pursue judicial actions which may provide the Division with more authority and the ability to impose greater fines.

I would submit that the Water Quality Division should have the opportunity to initiate judicial actions if the Division deems it necessary. However, I still believe the "may" on line 15 provides the Division with too much wiggle room.

With all of that in mind, I would ask the committee to consider the attached amendment. This amendment returns the "may" on line 15 to "shall" and then provides a list of actions, one of which the Division must initiate. The list includes issuing cessation orders, bringing judicial actions and seeking administrative or judicial penalties. This list of actions comes

Northern Plains Resource Council

6a

SENATE NATURAL RESOURCES
EXHIBIT NO. 6a
DATE 1-16-95
BILL NO. SB 78

NPRC Amendment to SB 78

Section 10
Emergencies

Page 10, Section 10. Emergencies

1. Line 15
Following: "department"
Strike: remainder of line 15 and lines 16 and 17

2. Line 15
Following: "department"
Insert: "shall initiate an enforcement response which shall include any or all of the following actions:

(a) issuance of an order requiring the person to correct the violation pursuant to 75-5-601, 75-5-611, 75-5-613, and 75-5-621;

(b) bringing a judicial action as authorized by 75-5-614 and 75-5-622;

(c) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and 75-5-631 through 75-5-633.

(2) If the department issues an order pursuant to this part:"

3. Line 18
Strike: "(2)"
Insert: "(a)

4. Line 20
Strike: "(3)"
Insert: "(b)"

2401 Montana Avenue, #200 Billings, MT 59101-2336 (406) 248-1154

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 1-16-95
BILL NO. SB 78

405

Mr Chairman, committee members,

Good afternoon to you all. My name is David Zimmerman, I live in Pony, I'm the chairman of the Concerned Citizens of Pony, and I'm here on their behalf to encourage you to approve SB 78 for passage by the full senate.

Our experience in Pony clearly illustrates the need for bonding authority at the DHES. Bonding was a major issue in the permitting process for the Pony Gold Mill, but impossible to resolve due to the lack of that authority. After a short run at mining, the mill ceased operation. Liens totalling nearly 1/2 million dollars have been filed against the company. Unpaid county taxes and penalties come to approx. $180,000. The company failed in it's obligation to monitor water quality for a two year period resulting in revocation of the permit. Cyanide has recently been found in the groundwater at two locations, including one domestic well in Pony. Full reclamation could prevent further degradation of the water in Pony, but a company in this kind of financial distress is not likely to fulfill it's commitment to do so. The mill is now reputedly under " new ownership " but we have no way of telling if that will be any improvement. If or when the new operator applies for a permit, the DSL has indicated that it will again leave permitting to the DHES Without DHES bonding authority the taxpayers of Montana may end up footing the bill for reclamation.

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 1-16-78
BILL NO. SB 78

SB 78 replaces voluntary bonding with the authority to REQUIRE bonding. The voluntary bonding legislation (sec 75-5-405) came out of our situation at Pony. The CEO of Chicago Mining said that he would be happy to post a bond if only the DHES could accept it. When the law was changed to allow it, nothing happened. In fact the DHES has not received a single voluntary bond. This definitely shows the need for amendment.

Responsible mining companies should have no objection to this bill, after all when they sign the permit they have agreed to do the reclamation. If they can't afford to set aside funds for that purpose, they are under capitalized. This is poor business practice in an industry subject to instability and fickle market conditions. When a mining operation fails, company assets, and investors assets are endangered. OK, they knew the risk. However the citizens of Montana also have assets at risk, and first among these is Water Quality. Reclamation can be an effective tool to protect our groundwater after mining closures, and the citizens of Montana should be assured that the funds are there to reclaim, even if the company is not. Again, I ask you to do all you can to ensure that this bill is passed, and to ensure that the groundwater of Montana gets the protection it deserves. I'd like to thank the chairman and the committee for this opportunity to comment.

David Zimmerman
Box 253
Pony, MT. 59747

DATE 1-16-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 78

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
MIKE MURPHY	MT. WATER RES. Ass	78		✓
Patrick M. Montana	MSR + NMOBA	78		X
Holly Franz	MPC	78		✓
DON ALLEN	MT Wood Products Ass	78		✓
FRANK CROWLEY	NEW BUTTE MINING ROSEBUD ENERGY, etc	78		X
Glenn Marx	Governor's office	78	X	
Bob Williams	mt mine	78		
Jim Jensen	MEIC	78	✓	
LARRY BROWN	Ag Pres. Assn.	78		✓
CHRIS IMHOFF	MONTANA LEAGUE OF WOMEN VOTERS	78	✓	
Ted Lange	NPRC	78	✓	
Ben Havdahl	MT Motor Carriers Assn	78		✓
John Bloomquist	Mt. Stockgrowers	78		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXHIBIT NO. 8 - 1/4//95
THE ORIGINAL OF THIS DOCUMENT
IS STORED AT THE HIST.SOCIETY AT
225 N.ROBERTS, HELENA MT 59620-1201
PHONE NO.444-2694

DATE 1-16-95

SENATE COMMITTEE ON NAT RES.

BILLS BEING HEARD TODAY: SB 78

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Richard C Parks	self/NPRC	78	✓	
FLORENCE ORE	NPRC	78	✓	
Julia Page	NPRC	78	✓	
Jerry Iverson	Cottonwood Resource Council	78	✓	
Kris Wilkinson	OLA	78		
Beth Wheatley	MWF	78		
STEVE PILCHER	DHES	78	✓	
Alan Rollo	MWF	78	✓	
DAVE HILL		78		
David Zimmerman	C.C.P.	78	✓	
Jefferson Fitzpatrick	Pegasus Gold	78		✓
Peggy Trent	WETA	78		✓
GARY LANGLEY	MONTANA MINING ASSN.	78		✓
Bob Thoyer	DHES	78	--	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SEN. FOSTER said if no. 5 of the discussion bill was eliminated and the term "nontransient community" was eliminated in no's 9, and 10, and "school" was inserted, the bill would be addressing schools.

Todd Everts, Environmental Quality Council, responded that the definition in the statute was not clear.

Mr. Melstad said the committee members might consider leaving the definition "nontransient" as it is, and adding, "a nontransient system serving schools" at the end of no's. 9-10, **CHAIR. GROSFIELD** said the definition could read, "serving a school that is not a community water system." **Mr. Melstad** said that would cause a problem with the definition of "nontransient."

Motion/Vote: **SEN. FOSTER MOVED TO STRIKE "nontransient and noncommunity", IN THE DEFINITIONS no's 5, 9 and 10, AND INSERTING "serving a school." MOTION CARRIED UNANIMOUSLY.**

Vote: **MOTION TO ADOPT AMENDMENTS AS CONTAINED IN EXHIBIT 2, CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. TVEIT MOVED DO PASS ON SB 153 AS AMENDED. MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 78

{Tape: 2; Side: A; Comments: tape is not clear}

Motion: **SEN. WELDON MOVED DO PASS ON SB 78.**

Motion: **SEN. FOSTER MOVED TO AMEND SB 78 AS CONTAINED IN EXHIBIT 4.**

Discussion: **SEN. WELDON** said the legislative audit found some significant problems. He said he would support narrowing the bonding requirement, but not completely eliminating it, which would defeat the purpose of the bill.

CHAIR. GROSFIELD said SB 78 is more that just a bonding issue. He stated that the audit said that the voluntary program had not been used and should be eliminated from the statute, or made mandatory. He said the biggest issue as a result of the audit, was management concerns. The situation at Pony was discussed at the hearing. The voluntary bonding that is in the statute goes back to the Pony situation. There was not a bond in place because the mill is grandfathered. He asked **Steve Pilcher, Administrator, Water Quality Division, Department of Health and Environmental Sciences** if the bonding provision in SB 78 had been in effect would it have affected the Pony situation. **Mr. Pilcher**

said it would have been applicable to the Pony situation because it was a mandatory bonding, but with department discretion.

SEN. WELDON asked **Mr. Pilcher** if the mandatory bonding provision were in effect now, how would it have affected the Pony situation. **Mr. Pilcher** replied that the department would have had funds available through the bond to reclaim that portion of the facility that was contaminating the groundwater.

SEN. CHRISTIANS said it was his understanding that if it remains voluntary bonding, no bonds would be forthcoming, and the people of Pony would never be in a position to recover the damage from the mill tailings.

CHAIR. GROSFIELD said the department recently tested **Mr. Zimmerman's** water, and the cyanide in the well had increased dramatically in the past month. The department has ordered the mine owners to provide an alternative source of water for the **Zimmermans.** There is another way to help the people of Pony in the event SB 78 does not pass, and that would be to amend a section of law in the mining statutes, but that would not fit into SB 78. There is an exception in the Hard Rock Mining Act that could be eliminated to help the Pony problem. The amendment would be to strike the exception and that could alleviate the predicament of the people of Pony.

CHAIR. GROSFIELD said another audit recommendation was that the department had passed rules granting exclusions to certain kinds of uses. The auditor could not find any statutory authoity for those exclusions. The auditor said, either change the rules and eliminate the exclusions, or seek legislation to establish those exclusions. **CHAIR. GROSFIELD** requested a copy of the exclusions from **Mr. Pilcher.**

John Arrigo, Water Quality Division, Department of Health and Environmental Sciences, reviewed the exclusions from the Montana Ground Water Pollution Control System with the committee members as contained in **EXHIBIT 5.**

Mr. Arrigo reviewed a list of permitted activities that would require reclamation bonds as contained in **EXHIBIT 6.**

SEN. COLE asked if **SEN. FOSTER'S** amendments affected the exclusions. **Mr. Pilcher** said the amendments revert back to the voluntary permitting of the water quality as they exist now.

SEN. WELDON said SB 78 would address future problems that may occur in Pony. Voluntary bonding will not help that situation, but mandatory bonding would.

SEN. KEN MILLER said if a company could get a voluntary bonding permit, the permit would probably be granted more readily. **CHAIR. GROSFIELD** said if a permit applicant meets the requirements of the law, then the department grants the permit.

He said he did not think the department could legally use voluntary bonding as some sort of ransom or extortion in order to grant a permit.

Vote: **MOTION TO ADOPT AMENDMENT AS CONTAINED IN EXHIBIT 4 CARRIED 6 - 3 ON A ROLL CALL VOTE.**

Motion: **SEN. FOSTER MOVED TO ADOPT AMENDMENT AS CONTAINED IN EXHIBIT 7.**

Discussion: **SEN. WELDON** said he was against the amendment because it was not necessary. There is already a provision in the law to notify a person of a violation.

{Tape: 2; Side: B}

SEN. WELDON said the scenario would be, the department would issue two letters instead of taking action. **CHAIR GROSFIELD** said it also says "which may include any of the following", and subsection 2 says, "they can bring a judicial action."

Vote: **MOTION TO ADOPT AMENDMENTS AS CONTAINED IN EXHIBIT 7, CARRIED 7-2, with SEN. CHRISTIANS and SEN. WELDON voting no.**

Motion/Vote: **SEN. FOSTER MOVED TO DO PASS SB 78 AS AMENDED. MOTION CARRIED 7-2, with SEN. CHRISTIANS and SEN. WELDON VOTING NO.**

Discussion:

CHAIR. GROSFIELD said he would like to get the committee's reaction on the Pony situation, since it is out of SB 78 for now. He asked the committee members if they were interested in drafting legislation in the Hard Rock Mining program, to help the Pony situation.

Michael Kakuk, Environmental Quality Council said LC 361 was redone 4 times and the last time, it put that section of law back into the Department of State Lands bill, that will be introduced by **REP. KNOX.** Basically, if the Pony mill starts up again the people will be covered. It is already in a proposed piece of legislation.

CHAIR. GROSFIELD asked **Mr. Kakuk** if he had a time-frame on when the bill would be introduced. **Mr. Kakuk** said he assumed it would be introduced sometime next week.

Mr. Kakuk said if the committee would like to request another bill draft, they would have to do so immediately, because February 11 was the deadline.

SENATE STANDING COMMITTEE REPORT

January 30, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 78 (first reading copy -- white), respectfully report that SB 78 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, lines 6 through 9.
Strike: "REMOVING" on line 6 through "QUALITY;" on line 9.

2. Title, line 12.
Following: "SECTIONS"
Strike: "75-5-103,"

3. Title, line 13.
Strike: "75-5-405,"

4. Page 1, line 18 through page 4, line 8.
Strike: Section 1 in its entirety
Renumber: subsequent sections

5. Page 5, lines 14 through 25.
Strike: Section 4 in its entirety
Renumber: subsequent sections

6. Page 5, line 27 through page 6 line 25.
Strike: Section 5 in its entirety
Renumber: subsequent sections

7. Page 9, following line 29.
Insert: "(2) Unless an alleged violation represents an imminent threat to human health, safety, or welfare or to the environment, the department shall first issue a letter notifying the person of the violation and requiring compliance. If the person fails to respond to the department's letter, then the department may take further action as provided in subsection (1)."
Renumber: subsequent subsection

8. Page 12, line 2.
Strike: "7"
Insert: "5"

Amd. Coord.
Sec. of Senate

9. Page 12, lines 4 through 7.
Strike: "(1)" on line 4 through "[Section 8]" on line 7
Insert: "[Section 5]"

10. Page 12, line 8.
Strike: "8"
Insert: "5"

-END-

HOUSE NATURAL RESOURCES

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0541	WENNEMAR, KENNETH 2/13		REDEFINE PIPELINES SUBJECT TO MMFSA CANCELLED	VOTE:		
HJ0010	KNOX, DICK 1/17	1/23	INTERIM STUDY OF NATURAL RESOURCE COMPLIANCE AND ENFORCEMENT PROGRAMS	PASS AS AMENDED 2-1 VOTE: 17-1		2/02
HJ0022	TASH, BILL 2/11	2/15	JR URGING DHES TO ADOPT AN AIR QUALITY RULE FOR MINOR CHANGES IN PERMITS	PASS AS AMENDED 2/17 VOTE: 15-3		2/17
HJ0024	HARPER, HAL 2/14	2/15	STREAMSIDE CORRIDOR PROTECTION -- CONSENSUS GROUP	PASS AS AMENDED 2/15 VOTE: 15-3		2/17
HJ0025	QUILICI, JOE 2/16	2/17	SUPPORT TECHNOLOGY FOR MINE WASTE IN BUTTE	DO PASS 2/17 VOTE: 18-0		2/17
HJ0029	OHS, KARL 3/17	3/22	STATE LANDS INTERIM STUDY CANCELLED	VOTE:		
SB0046	SWYSGOOD, CHUCK 1/20	1/27	GROUND WATER ASSESSMENT AND MONITORING PROGRAM FUNDING	CONCUR 1/27 VOTE: 17-0		1/30
SB0048	KEATING, TOM 1/27	2/08	AN ACT AMENDING CERTAIN PROVISIONS OF THE MONTANA CLEAN AIR ACT	CONCUR 2/10 VOTE: 15-3		2/13
SB0071	STANG, BARRY 1/23	1/27	REVISING THE PETROLEUM TANK RELEASE CLEAN UP LAWS	CONCUR AS AMENDED 1/27 VOTE: 17-0		1/30
SB0078	GROSFIELD, LORENTS 2/06	3/03	WATER QUALITY PERMIT ENFORCEMENT, FEE, AND BONDING REVISIONS	CONCUR AS AMENDED 3/6 VOTE: 17-0		3/07
SB0122	TOEWS, DARYL 2/06	3/06	REVISE PROCESS OF GRANTING RIGHT-OF-WAY EASEMENTS ON STATE LANDS	CONCUR AS AMENDED 3/6 VOTE: 17-0		3/07
SB0147	HERTEL, JOHN 2/15	3/03	STATE WATER PROJECT LAW REVISIONS	CONCUR AS AMENDED 3/8 VOTE: 17-1		3/09

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **Rep. Dick Knox, Chairman,** on March 3, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: Rep. Robert Story, Jr. (R)

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 153, SB 147, SB 78, SB 204
Executive Action: SB 203 Be Concurred In

Tape 1, Side A

federal government, state government, local governments, individual water rights, and Indian tribes and is very complicated. If the compact commission wasn't there to negotiate, the state would be in federal court and an individual water right holder wouldn't have much power.

REP. WAGNER said he believed that the state had more control over its water than it realizes and it's falling prey to the federal government without challenging it.

Tape 4, Side A

Vote: Voice vote was taken. **Motion to Be Concurred In carried 13 to 5. REP. DANIEL FUCHS, REP. LILA TAYLOR, REP. DOUG WAGNER, REP. PAUL SLITER and REP. SCOTT ORR voted no.**

HEARING ON SB 78

Opening By Sponsor:

SEN. LORENTS GROSFIELD, Senate District 13, Big Timber, said SB 78 was requested by the Department of Health and Environmental Sciences (DHES). The bill is the result of an audit of the department by the legislative auditor. The audit was critical of the Water Quality Bureau in certain areas. It was recommended that the Water Quality Bureau initiate better management strategies. SB 78 is a proposal to modify certain requirements for the water pollution control advisory council, revise fee requirements for holders of a permit or authorization under the water quality laws, and to revise the enforcement provisions of the water quality laws to clarify existing enforcement authority.

Proponent's Testimony:

Steve Pilcher, Water Quality Bureau, DHES, said SB 78 allows the department to reduce permit fees to people who are in compliance with the permit in recognition of their efforts. The bill also defines the department's enforcement options and has added one important feature. The additional feature is that unless there is an imminent threat to public health the department must notify a potential violator or an alleged violator by written notice that the department thinks there is a problem and provide the violator with an opportunity to address the problem before the department invokes enforcement action.

Larry Brown, Agricultural Preservation Association, supported SB 78.

Mike Murphy, Montana Water Resources Association, supported SB 78 as amended.

Jeff Barber, Northern Plains Resource Council, supported SB 78.

Opponents' Testimony: None

Informational Testimony: None

Tape 4, Side B

Questions From Committee Members and Responses:

REP. HAL HARPER asked **SEN. GROSFIELD** how much time the department would give an alleged violator to respond. **SEN. GROSFIELD** said he didn't know.

REP. DANIEL FUCHS asked **Mr. Pilcher** if more FTEs would be required for the department to carry out its enforcement actions. **Mr. Pilcher** said the department did request additional FTEs which included an attorney and an administrative support person for the enforcement section. That was part of the budget before the results of the audit were known.

REP. DAVID EWER said page 10, line 3 of the bill states that if a person fails to respond to the department's letter, the department "may" take further action. He asked **Mr. Pilcher** why the word was "may" instead of "shall." **Mr. Pilcher** said his interpretation was that "may take further action" merely reflects the requirement to first issue a written notice to the violator. Once that requirement has been satisfied, the department may proceed with the other enforcement responses as defined in section 1 of the bill. **REP. EWER** said he didn't agree with **Mr. Pilcher's** rationale.

REP. BILL TASH asked **Mr. Pilcher** if the department's authority to bring judicial action against a violator was an authority the department didn't have before the proposed legislation. **Mr. Pilcher** said the department has always had that authority under the provisions of the Water Quality Act. **REP. TASH** asked **Mr. Pilcher** if it was common for the department to take judicial action prior to initiating any administrative action. **Mr. Pilcher** said generally the sequence would be an informal notification and if that doesn't work there would possibly be an administrative order or penalty. Depending on the nature and severity of the violation, the department may seek judicial penalties or criminal penalties right away.

REP. HARPER said the language on page 10 of the bill states that if a person fails to respond to the department's letter the department can take further action and asked **Mr. Pilcher** what the department would do if a violator responded to a notification of violation but didn't come into compliance. **Mr. Pilcher** said the violator would have to respond to the required corrective actions listed in the letter. **Mr. Pilcher** said the department should seek legal clarification on the statement.

Closing by Sponsor:

SEN. GROSFIELD closed.

Tape 5, Side A

HEARING ON SB 204

Opening by Sponsor:

SEN. LORENTS GROSFIELD, Senate District 13, Big Timber, said SB 204 was requested by the Department of Health and Environmental Sciences (DHES). The bill clarifies existing enforcement authority under the public water supply laws and requires the department to consider established criteria when seeking civil or administrative penalties.

Proponents' Testimony:

Steve Pilcher, Water Quality Bureau, DHES, said SB 204 is the department's response to the Legislative Audit Committee's recommendations and urged the committee to support it.

Larry Brown, Agricultural Preservation Association, supported SB 204.

Mike Murphy, Montana Water Resources Association, supported SB 204.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. CLIFF TREXLER said the bill states that the department and court shall consider the violator's ability to pay the $10,000 per day civil penalty and asked **SEN. GROSFIELD** how the department would make that determination. **SEN. GROSFIELD** said to require $10,000 per day from a person who can only afford to pay $200 would be like trying to get blood out of turnip and wouldn't do any good. The intent is to give the department flexibility in making that determination.

Closing by Sponsor:

SEN. GROSFIELD closed.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **Rep. Dick Knox, Chairman,** on March 6, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 200, SB 122
Executive Action: SB 78 Be Concurred In As Amended,
SB 204 Be Concurred In As Amended,
SB 122 Be Concurred In As Amended

Tape 1, Side A

Guy Johnson, Staking Engineer, Fergus Electric Cooperative, Lewistown, said the easement process takes from 70 days to 12 months. The cooperative hasn't experienced any lengthy delays in its dealings with the Bureau of Land Management, Department of Natural Resources and Conservation, and Forest Service. The only delays have come from dealings with DSL. The changes in SB 122 are necessary and are important for the consumers.

Joan Mandeville, Montana Telephone Association, said telephone companies have also experienced unnecessary delays. SB 122 will help expedite the right-of-way processes and cut costs.

Mike Strand, Montana Independent Telecommunications Systems, supported SB 122.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. AUBYN CURTISS asked **Mr. Johnson** what his permits cost. **Mr. Johnson** said the cost of a permit is based on the evaluation of the land that is being crossed. **Mr. Johnson** said the majority of his permits were based on a $500 per acre basis.

Tape 3, Side A

REP. CURTISS asked **SEN. TOEWS** if he would have any objection to adding language that would address environmental assessments. **SEN. TOEWS** said he had no objections.

Closing by Sponsor:

SEN. TOEWS closed.

EXECUTIVE ACTION ON SB 78

Motion: **REP. HAL HARPER MOVED SB 78 BE CONCURRED IN.**

Motion/Vote: **REP. DAVID EWER MOVED AN AMENDMENT TO SB 78.** EXHIBIT 5 Voice vote was taken. **Motion carried unanimously.**

Discussion:

REP. CLIFF TREXLER said page 10, line 2, states that "the department shall first issue a letter notifying the person," etc. "If the person fails to respond to the department's letter", etc. **REP. TREXLER** said he thought "describing a plan to comply to the department's letter" should be inserted at the end of the word "respond" and asked **Steve Pilcher, Department of Health and Environmental Sciences** to comment. **Mr. Pilcher** said the department has the responsibility to identify in the notification

letter what the individual has to do to get back into compliance. The notification letter would imply that the individual's response would have to address the issues of concern.

Motion: **REP. TREXLER MOVED AN AMENDMENT TO SB 78 THAT WOULD ADD THE WORD "ADEQUATELY" BEFORE THE WORD "RESPOND."**

Discussion:

REP. HAL HARPER said "in a timely manner" should also be added after the word "respond."

REP. ROBERT STORY said if the department notifies a person that it thinks he is in violation and he responds with a list of corrective actions he is going to take, he may be opening himself up to a process he doesn't want to get involved in, especially if he ends up in court. The less a person has on paper, the better off he is. The only response that is needed is that the notification was received. A certified letter would be enough to indicate the notification was received.

REP. AUBYN CURTISS asked **Mr. Pilcher** to comment on the proposed amendments. **Mr. Pilcher** said that a letter sent to the department saying only that the letter of notification had been received would not be adequate and the department would proceed with other enforcement options.

REP. EMILY SWANSON said she thought the intent of that sentence was if the person fails to correct the violation, the department would proceed with other enforcement options, not if the person fails to write the department a letter.

REP. TREXLER asked **Mr. Kakuk** for his input in amending the sentence. **Mr. Kakuk** suggested that on page 10, line 3, the word "respond" could be stricken and "comply with" could be inserted.

Motion/Vote: **REP. TREXLER MOVED A SUBSTITUTE AMENDMENT TO INSERT "THE CONDITIONS OF" AFTER "RESPOND TO" ON PAGE 10, LINE 3, OF THE BILL.** Voice vote taken. **Motion carried unanimously.**

Motion/Vote: **REP. FUCHS MOVED SB 78 BE CONCURRED IN AS AMENDED.** Voice vote was taken. **Motion carried unanimously.**

Tape 3, Side B

Motion/Vote: **REP. HARPER MOVED RECONSIDERATION ON SB 78 DUE TO AN AMENDMENT THAT WAS OVERLOOKED.** Voice vote was taken. **Motion carried unanimously.**

Motion/Vote: **REP. FUCHS MOVED THE GROSFIELD AMENDMENT. EXHIBIT 6** Voice vote was taken. **Motion carried unanimously.**

Motion/Vote: **REP. HARPER MOVED SB 78 BE CONCURRED IN AS FURTHER AMENDED.** Voice vote was taken. **Motion carried unanimously.**

consistency between the agencies. It is important to stay consistent. Industry wants consistency.

Vote: Voice vote was taken. **Motion on EWER amendment no. 1 carried unanimously.**

Discussion:

REP. EWER said if the issue of consistency is important, **Mr. Kakuk** had alerted him that the capitalized language on page 3, lines 13, 14 and 15, is inconsistent. **REP. EWER** asked **Mr. Kakuk** to comment. **Mr. Kakuk** said that language was added in the Senate and is inconsistent.

Motion/Vote: **REP. MOVED TO STRIKE THE CAPITALIZED LANGUAGE ON PAGE 3, LINES 13, 14 AND 15.** Voice vote was taken. **Motion failed 11 to 7.**

Motion/Vote: **REP. HARPER MOVED SB 204 BE CONCURRED IN AS AMENDED.** Voice vote was taken. **Motion carried 17 to 1. REP. DOUG WAGNER voted no.**

EXECUTIVE ACTION ON SB 78

Motion/Vote: **REP. ROBERT STORY MOVED SB 78 AS AMENDED BE RECONSIDERED.** Voice vote was taken. **Motion carried unanimously.**

Motion/Vote: **REP. STORY MOVED TO AMEND PAGE 11, LINES 19 THROUGH 21.** Voice vote was taken. **Motion carried 15 to 3. REP. HARPER, REP. BOB RANEY and REP. EMILY SWANSON voted no.**

Motion/Vote: **REP. STORY MOVED SB 78 BE CONCURRED IN AS AMENDED.** Voice vote was taken. **Motion carried unanimously.**

EXECUTIVE ACTION ON SB 122

Motion: **REP. AUBYN CURTISS MOVED SB 122 BE CONCURRED IN.**

Motion/Vote: **REP. CURTISS MOVED AN AMENDMENT TO SB 122.** Voice vote was taken. **Motion carried unanimously.**

Motion/Vote: **REP. PAUL SLITER MOVED SB 122 BE CONCURRED IN AS AMENDED.** Voice vote was taken. **Motion carried unanimously.**

HOUSE STANDING COMMITTEE REPORT

March 7, 1995

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 78 (third reading copy -- blue) be concurred in as amended.

Signed: Dick Knox
Dick Knox, Chair

And, that such amendments read: Carried by: Rep. Knox

1. Page 5, line 10.
Following: "~~voluntarily~~"
Insert: "voluntarily"

2. Page 10, line 3.
Following: "THE"
Insert: "conditions in the"

3. Page 10, line 3.
Following: "DEPARTMENT"
Strike: "MAY"
Insert: "shall"

4. Page 11, line 20.
Following: "action,"
Insert: "the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation to waters of the state,"

-END-

Committee Vote:
Yes 7, No 0.

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